



Case No. 1:14-CV-1029  
Gwin, J.

diversity jurisdiction.<sup>4/</sup> In doing so, Dolgen Midwest said that it was “more likely than not” that the amount in controversy exceeded \$75,000 due to Plaintiff’s claims for economic and non-economic compensatory damages and punitive damages.<sup>5/</sup>

Plaintiff Younglove now moves the court to remand, saying that the amount in controversy requirement is not met.<sup>6/</sup> She says that her damages do not exceed \$74, 999, and attaches to her motion an affidavit from her attorney saying that Plaintiff does not seek more than \$75,000.<sup>7/</sup>

Defendant Dolgen Midwest opposes the motion.<sup>8/</sup> The motion is ripe.

## II. Legal Standard

“The district courts of the United States ... are courts of limited jurisdiction. They possess only that power authorized by Constitution and by statute.”<sup>9/</sup> A defendant may remove a civil action filed in a state court to a United States district court having original jurisdiction over the action.<sup>10/</sup> Diversity of citizenship, the basis of federal subject matter jurisdiction in this action, is satisfied when the amount in controversy in an action between citizens of different states exceeds \$75,000.<sup>11/</sup>

The removing party bears the burden of establishing federal subject matter jurisdiction<sup>12/</sup>.

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<sup>4/</sup> Doc. [1](#).

<sup>5/</sup> *Id.* at 3.

<sup>6/</sup> Doc. [8](#).

<sup>7/</sup> *Id.*; Doc. [8-2](#).

<sup>8/</sup> Doc. [9](#).

<sup>9/</sup> [Exxon Mobil Corp. v. Allapattah Servs., 545 U.S. 546, 552 \(2005\)](#) (quoting *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994)).

<sup>10/</sup> [28 U.S.C. § 1441\(a\)](#).

<sup>11/</sup> [28 U.S.C. § 1332\(a\)](#).

<sup>12/</sup> [Jerome-Duncan Inc. v. Auto-By-Tel, L.L.C., 176 F.3d 904, 907 \(6th Cir.1999\)](#).

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Jurisdiction is determined as of the time of removal.<sup>13/</sup> “If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.”<sup>14/</sup>

Where the plaintiff seeks to recover an unspecified amount that is not clearly greater or less than \$75,000, the removing defendant has the burden to show by the preponderance of the evidence that the jurisdictional amount has been met.<sup>15/</sup> Though clarification that damages do not exceed \$75,000 may defeat jurisdiction and require remand in certain circumstances,<sup>16/</sup> a plaintiff statement that the plaintiff will not seek more than \$75,000 is insufficient to divest the Court’s jurisdiction.<sup>17/</sup>

### III. Analysis

Plaintiff says that the amount of controversy requirement is not met, since her potential damages do not exceed \$75,000.<sup>18/</sup> In support of her position, she has submitted an affidavit from her attorney stating that Plaintiff “does not seek damages in excess of \$75,000,” had “served a demand on Defendant in the amount of \$74,999,” “would accept settlement in an amount less than \$74,999,” and believes “the instant matter does not have a value in excess of \$74,999.”<sup>19/</sup>

Defendant Dolgen Midwest responds that such a stipulation now does not defeat jurisdiction.<sup>20/</sup> It says that at the time of removal, Plaintiff’s alleged damages were “more likely than not” to be over \$75,000.<sup>21/</sup> And it says that the affidavit from Plaintiff’s attorney cannot reduce the

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<sup>13/</sup> [\*Ahearn v. Charter Twp. of Bloomfield\*, 100 F.3d 451, 453 \(6th Cir.1996\).](#)

<sup>14/</sup> [28 U.S.C. § 1447\(c\).](#)

<sup>15/</sup> [\*Gafford v. Gen. Elec. Co.\*, 997 F.2d 150, 158 \(6th Cir.1993\).](#)

<sup>16/</sup> [See \*Egan v. Premier Scales & Sys.\*, 237 F.Supp.2d 774, 778 \(W.D. Ky. 2002\).](#)

<sup>17/</sup> [\*Rogers v. Wal-Mart Stores, Inc.\*, 230 F.3d 868, 872 \(6th Cir. 2000\)](#) (“[A] post-removal stipulation reducing the amount in controversy to below the jurisdictional limit does not require remand to state court.”).

<sup>18/</sup> Doc. [8](#).

<sup>19/</sup> Doc. [8-2](#).

<sup>20/</sup> Doc. [9](#).

<sup>21/</sup> *Id.*

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amount in controversy to avoid litigating in federal court.

The Court agrees. At the time of removal, Plaintiff had alleged economic compensatory damages of approximately \$20,000; noneconomic damages that, under Ohio law, could be up to \$250,000; and punitive damages.<sup>22/</sup>

Post-removal, Plaintiff tries to say that her damages do not exceed \$74,999 and says she “does not seek damages in excess of \$75,000.”<sup>23/</sup> Notably, Plaintiff does not indicate that she would not accept more than \$75,000 in damages. But more important, this Court looks to the original complaint when deciding if the amount in controversy is more than \$75,000. Any reduction after removal, including the reduced claim in the amended complaint, does not destroy jurisdiction.<sup>24/</sup>

### III. Conclusion

For the reasons set forth above, the Court **DENIES** Plaintiff’s motion to remand.

IT IS SO ORDERED.

Dated: July 7, 2014

s/ James S. Gwin  
JAMES S. GWIN  
UNITED STATES DISTRICT JUDGE

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<sup>22/</sup>See Doc. [1](#).

<sup>23/</sup>Doc. [8-2](#).

<sup>24/</sup>See [Rogers, 230 F.3d at 872](#).